

VIRGINIA COMMUNICATIONS, INC.

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April 8, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: WT Docket number 03-66, RM-10586
Notice of Proposed Rule Making/
Memorandum Opinion and Order
Petition for Reconsideration

Dear Ms. Dortch:

Virginia Communications, Inc. ("VCI") hereby submits comments in support of the Petition for Reconsideration ("Petition") filed by the Wireless Communications Association International ("WCA"), regarding the amendment of the Commission's rules contemplated under the above-referenced docket. Specifically, VCI is filing these comments in support of WCA's petition that the Commission expeditiously reconsider and reverse its decision in last weeks Notice of Proposed Rulemaking and Memorandum Opinion and Order ("NPRM/MO&O") to impose an immediate freeze on the filing of applications for new or modified facilities in the Instructional Television Fixed Service ("ITFS") and, apparently, Multipoint Distribution Service ("MDS"). A freeze in the filing of applications for either new or modified MDS stations, or modified ITFS stations, will have a disastrous effect on VCI's business, both in its current operations and in its immediate plans for expansion.

Introduction

VCI has been an active MDS licensee for many years. During the late 1980s and early 1990s, VCI's principals launched one of the most successful wireless cable systems in the United States, operating as SuperChannels of Las Vegas, Inc. VCI was the successful bidder in thirteen BTA auctions: Athens, OH; Chillicothe, OH; Portsmouth, OH; Clarksville, TN-Hopkinsville, KY; Cedar Rapids, IA; Davenport, IA-Moline, IL; Iowa City, IA; Waterloo-Cedar Falls, IA; Altoona, PA; Olean, NY-Bradford, PA; Erie, PA; Huntington, WV; and Prescott, AZ. VCI's choice of markets was a function of geography, size, population, topography and the extant or likely penetration of DSL or cable modem services. The service regions have decidedly small-market and rural area profiles. 30% of the BTAs are in the lower third of all BTAs in terms of population. Of the 48 counties comprised by these BTAs, fully two-thirds lie outside the top 1,000 counties nationwide in terms of population, and nearly half rank below the largest 1,500 counties.

Today, VCI's Prescott, AZ system is the largest Internet Service Provider in northern Arizona, the fastest growing ISP in the area and one of the largest privately-held providers of high-speed wireless Internet services in the United States. VCI's customer base comprises residents and businesses of Prescott and its rural environs, including educational and municipal facilities. The Company recently entered into two contracts to provide broadband services on nearby Native American reservations. In just three years, VCI has invested over \$3M to establish its current level of service and continues large monthly investments to expand infrastructure, warranted by a large backlog of new service orders. Further infrastructure expansion, requiring the modification of MDS and ITFS stations in the market, is necessary to meet this demand. In addition, VCI's operation in Prescott contributes substantially to the local economy, employing 30 people with an annual payroll of nearly \$900,000.

Not surprisingly, the FCC has cited VCI's Prescott service as illustrative of the Commission's vision of universal access to high-speed broadband capability. In the *Interim Report on 3G*, the Commission lauded VCI for service that "encompasses approximately one third of a rural region surrounding Prescott that has no cable or DSL service and, in some cases, no landline telephone service."

VCI's performance record was the critical predicate in its recently receiving a \$1M SBA loan for system expansion. In order to qualify for this financing, VCI had to show its ability to profitably expand its service into unserved and underserved areas of its BTAs, as well as its ability to successfully compete with other broadband providers in the more populous areas. Key factors in this showing are the ability to efficiently engineer technical systems for optimal performance and the ability to effectively market, sell and support customers. The key concern is that VCI must still file numerous applications for new and modified MDS and ITFS stations, in order to accomplish this expansion of services throughout its licensed areas.

Readying Other Markets for Deployment

As VCI has continued to develop the Prescott market, it has also invested substantial resources in preparing for timed roll-outs in its other BTAs. In any given market, the initial planning stages involve complex network design and engineering, the identification and acquisition of transmit sites and cell locations, zoning approvals and other permits, marketing studies, and the actual preparation and filing of the FCC applications to secure specific channel authorizations for two-way capability – the final technical step in preparing a market for initial testing and subsequent launch. VCI has already invested hundreds of thousands of dollars in engineering, equipment and other capital preparations to serve BTAs other than Prescott. VCI plans to construct the two-way systems in the other markets at a rate of approximately one every 3-4 months. In all of these markets, there are extensive urban and rural areas where alternative broadband services are either non-existent or of limited availability. As a result of its Prescott operation, some 3,000 individuals have access to high-speed broadband service, most of which are enjoying this benefit for the first time. As a result of deployments in its other BTAs, VCI expects to provide previously unavailable broadband services to at least 75,000 homes and businesses. VCI is taking seriously the challenge to bring broadband services to these areas, as has been the Commission's desire.

Capital Market Conditions

As the Commission has observed, capital market conditions over the past year have slowed wireless broadband deployment and many larger carriers have exited the market or significantly scaled back their operations. These conditions have been especially harmful to the prospect of rural broadband deployments, and the FCC has lamented that broadband infrastructure investment in rural areas seems to be slowing. VCI has met with tremendous challenges in attracting new investment capital to expand its operations. Freezing the acceptance and processing of applications will have a very chilling effect on VCI's ability to raise needed capital.

Conclusion

In conclusion, VCI supports the WCA petition for reconsideration in this docket. We believe the Commission's current policy concerning new ITFS stations is reasonable and there is no need for a freeze on applications to modify existing ITFS stations for deployment of services. In addition, VCI believes that there is no need to freeze applications for new and amended MDS stations and that such a freeze will have critically harmful effects on the viability of broadband service providers like VCI.

Sincerely,

Stephen A. Merrill
Vice President